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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 425

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

HIGHLAND PARK MANUFACTURING CO.,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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BRIEF OF AMERICAN FEDERATION OF LABOR, AMICUS CURIAE

Interest in Proceedings

The American Federation of Labor, appearing amicus curiae, after having secured the consent of the parties hereto, presents argument in this brief limited to the single issue of whether or not the term "national or international labor organization" as used in Section 9(h) of the National Labor Relations Act, as amended, includes within its meaning such parent federations as the American Federation of Labor so as to require its officers to file the so-called "non-Communist affidavits." While the case before this Court involves another parent

federation, the determination of the Court in this case might well affect the interests of all American Federation of Labor affiliated national and international unions in respect to the activity of such unions during the time that the American Federation of Labor was not in compliance with Section 9(h). For this and other reasons[1], the American Federation of Labor desires to supplement the very able and exhaustive brief presented by the petitioner National Labor Relations Board by indicating very briefly the relationship between the American Federation of Labor and its affiliated national and international unions insofar as such relationship is relevant to the question of Congressional intent.

ARGUMENT

The determination of this question requires the construction of Section 9(h) of the Act, which reads as follows:

> "(h) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, no petition under section 9 (e) (1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or

[1] In his letter granting consent to the filing by the American Federation of Labor of a brief amicus curiae, the Solicitor General stated:

> "The ultimate question presented for decision in this case is whether the great national federations—the A. F. of L. and the C. I. O.—are required to comply with the provisions of Section 9 (h) of the Taft Hartley Act. That is a question which is obviously of very direct concern to your organization, and one as to which counsel for the American Federation of Labor will be in a position to assist the Court with relevant information."

constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods. The provisions of section 35A of the Criminal Code shall be applicable in respect to such affidavits."

The respondent contends that the term "officers of any national or international labor organization of which it is an affiliate or a constituent unit" should be construed to require not only the officers of the local unions of all internationals affiliated with the American Federation of Labor and the officers of such internationals themselves, but also the officers of the American Federation of Labor itself to comply with the provisions of Section 9(h).

That the scope of the term "national or international labor organization" is ambiguous would s n to be conclusively evidenced by the fact that two nited States Courts of Appeals (the Fourth in the instant case, and the Fifth in the case of *National Labor Relations Board* v. *Postex Cotton Mills*, 181 Fed. (2d) 919) have concluded that the language includes parent federations, while another Court of Appeals (the Court of Appeals for the District of Columbia, in *West Texas Utilities Company, Inc.*, v. *National Labor Relations Board*, 184 Fed. (2d) 233), together with the National Labor Relations Board itself, has concluded to the contrary. Since such ambiguity exists, resort to outside sources is required in order to ascertain Congressional intent, although it would appear, in case of fair doubt, that due regard for the principle of administrative expertness in the interpretation of government statutes should afford strong argument in favor of the views expressed by the Court of Appeals for the District of Columbia in the *West Texas Utilities* case. See *United States* v. *American Trucking Associations*, 310 U. S. 534.

Much of the reasoning of the Court below was predicated

on the conclusion that it was the central purpose of Section 9(h) to clear the labor movement of Communist influence and direction. With that conclusion there can be little disagreement except, perhaps, as to scope; necessarily, the effort to eliminate Communist influence relates only to those labor activities which are embraced, encouraged or protected under the National Labor Relations Act, as amended.

If, as will be shown shortly, the American Federation of Labor, as such, does not engage in collective bargaining and the calling of strikes, or in the use of other economic weapons, and does not direct or invoke such action in the national or international unions affiliated with it, or in the locals affiliated with such national or international unions,[2] then, entirely aside from all questions of syntax or semantics, it would appear that it would not have been a purpose of Congress to include the American Federation of Labor as a parent body within the meaning of the term "national or international labor organization" so as to require its officers to sign the anti-Communist affidavits.

As indicated in the brief filed herein by the National Labor Relations Board, the American Federation of Labor, which has been in existence since 1881, is a loosely knitted federation of autonomous national and international organizations of workers in various crafts, trades and industries. Its objects, as set forth in its Constitution (Article II), are primarily as follows:

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[2] The following discussion relates only to the relationship of the American Federation of Labor to affiliated National or International Labor Unions as such. That is the situation in the case at bar where the relationship of the CIO to one of its affiliated international unions is under consideration. The discussion in this brief has no reference to the situation not here involved in which the American Federation of Labor might itself act or function as an International Union, namely, the situation in which the American Federation of Labor charters and takes action in respect to a local union which is not in turn affiliated with any national or international union. A portion of American Federation of Labor activity is directed to the formation of directly affiliated local unions called Federal Labor Unions and in respect to which the American Federation of Labor stands in much the same relationship as would an International Union to one of its own affiliated local unions.

"The establishment of National and International Trade Unions, based upon a strict recognition of the autonomy of each trade, and the promotion and advancement of such bodies.

"The establishment of Departments composed of National or International Unions affiliated with the American Federation of Labor, of the same industry, and which Departments shall be governed in conformity with the laws of the American Federation of Labor.

"An American Federation of all National and International Trade Unions, to aid and assist each other; to aid and encourage the sale of union label goods, and to secure legislation in the interest of the working people, and influence public opinion, by peaceful and legal methods, in favor of organized labor."

Over a hundred national and international trade unions are affiliated with the American Federation of Labor. Such national and international unions may have organized independently and applied to the American Federation of Labor for a charter of affiliation as an established entity or may, in the first instance, have been created by the American Federation of Labor from its own local groups in the formation of which it has been instrumental. The term "National or International Trade Unions" refers to the central organizations in a trade, craft or industry with which the local unions are affiliated. These organizations are autonomous bodies and usually have certain powers of regulation or control over their constituent local unions through their constitutions and laws in respect to the functioning of the local unions and, in particular, in respect to the functions and policies of local labor unions in relation to their dealings with employers in the process of collective bargaining and in respect to the various matters which Congress has touched upon in the National Labor Relations Act. Often, however, the local unions themselves enjoy local autonomy in many essential respects.

However, as between the American Federation of Labor and its national and international union constituents there

is no power in the American Federation of Labor to direct bargaining policies or other incidents of collective bargaining as dealt by or encompassed within the National Labor Relations Act, as amended. The American Federation of Labor does not tell any of its particular national or international affiliates, let alone any local union affiliated with that affiliate, when to seek elections or file charges under the National Labor Relations Act, how to conduct collective bargaining, how to deal with employers, when to strike and what type of strike strategy to engage in, or when to do or not to do any of the things forbidden or permitted under the National Labor Relations Act, as amended. It simply is not the function of the American Federation of Labor, vis-a-vis any particular national or international labor organization affiliated with it, to engage in collective bargaining with employers, or otherwise deal with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work within the meaning of the term "labor organization" as defined in Section 2(5) of the Act. In these matters the national and international labor organizations affiliated with the American Federation of Labor are autonomous. The foregoing facts are well known and can be presumed to be in the minds of the Congressmen who wrote and enacted the 1947 amendments to the National Labor Relations Act.

Since this is the case, no purpose under the Act in respect to ridding the American labor movement of the influence and direction of Communist labor leaders could possibly be served by requiring officials of the American Federation of Labor to sign the non-Communist affidavits as a condition precedent to the exercise by a local union affiliated with an affiliated international union of its bargaining rights under the Act.

In addition to the foregoing consideration of the structure of the American labor movement and its operations

in practical effect, it must also be remembered that, as indicated so well by petitioner board in its brief herein, the plain meaning of the words "national or international labor organization"—the meaning which is understood by all persons having any knowledge or information concerning, or experience in, the American labor movement—is that the term includes only those national or international unions which are affiliated with a parent federation, such as, for instance, in the case of the American Federation of Labor, the International Brotherhood of Teamsters, or the Brotherhood of Painters. It would be greatly stretching that meaning to include such a body of affiliated national and international unions as is the American Federation of Labor within such term, it is respectfully urged that Congress did not so intend. Certainly, it would be preposterous to deprive the thousands of local affiliates of the American Federation of Labor affiliated national and international unions throughout the country of bargaining privileges and protections under the National Labor Relations Act, as amended, because at any particular time one or more officers of the overall body, the American Federation of Labor, have not signed the non-Communist affidavits.

It is respectfully submitted that for the reasons set forth herein, as well as for the many compelling reasons set forth in the brief of the respondent Board, the decision below should be reversed.

Respectfully submitted,

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